U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30590679

Date: APR. 8, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a financial and investment analyst, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This category makes immigrant visas available to noncitizens who demonstrate "sustained national or international acclaim" and submit "extensive documentation" of their achievements' recognition in their fields. Section 203(b)(1)(A)(i) of the Act.

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner met one initial evidentiary criteria – two less than required to obtain a final merits determination. The Director also found that the Petitioner did not demonstrate her intent to continue working in her field in the United States and willfully submitted false English translations of evidence. On appeal, the Petitioner denies that she intended to submit altered translations and asks us to review the Director's decisions regarding evidentiary criteria.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the record supports the Director's misrepresentation finding. By not raising one issue and not specifying errors in others, the Petitioner effectively waived challenge to the findings regarding her intent to work in the United States and her claims of meeting additional evidentiary criteria. We will therefore also dismiss the appeal.

I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that:

- They have "extraordinary ability in the sciences, arts, education, business, or athletics;"
- They seek to continue work in their field of expertise in the United States; and
- Their work would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act.

The term "extraordinary ability" means a level of expertise commensurate with "one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Evidence of extraordinary ability must demonstrate a noncitizen's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary standards. 8 C.F.R. § 204.5(h)(3)(i-x).[1]

If a petitioner meets either of the evidentiary requirements above, U.S. Citizenship and Immigration Services (USCIS) must make a final merits determination as to whether the record, as a whole, establishes their sustained national or international acclaim and recognized achievements placing them among the small percentage at their field's very top. *See Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010) (requiring a two-part analysis of extraordinary ability).

II. ANALYSIS

A. The Petitioner

The record shows that the Petitioner, a Chinese native and citizen, earned a bachelor's degree in management in China and a master's degree in financial investment in Australia. After returning to China, she gained more than eight years of experience as a financial analyst and investment director.

The Petitioner claims that, in Asia, she is "widely recognized" as a "leading expert" in financial analysis. She states that she has made "significant contributions" to the research and development of financial services and has "noteworthy achievements" integrating international financial exchanges.

The record does not establish – nor does the Petitioner claim – her receipt of a major, international award. She must therefore meet at least three of the ten lesser evidentiary criteria. *See* 8 C.F.R. § 204.5(h)(3)(i-x). The record supports the Director's finding that the Petitioner demonstrated her authorship of scholarly articles in her field. *See* 8 C.F.R. § 204.5(h)(3)(vi).

Thus, to obtain a final merits determination, the Petitioner must both demonstrate her intent to continue work in her field in the United States under section 203(b)(1)(A)(ii) of the Act and satisfy at least two other evidentiary criteria under 8 C.F.R. § 204.5(h)(3)(i-x). We first address the statutory requirement.

B. Intent to Continue Working in the Field in the United States.

To qualify for the requested immigrant visa category, a noncitizen must "seek[] to enter the United States to continue work in the area of extraordinary ability." Section 203(b)(1)(A)(ii) of the Act.

By regulation:

> the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include

[1] If the standards do not readily apply to a petitioner's occupation, the noncitizen may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(h)(4).

> letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the [petitioner] detailing plans on how [they] intend[] to continue [their] work in the United States.

8 C.F.R. § 204.5(h)(5).

The Petitioner stated that, in the United States, she would continue working in the financial analysis field. In response to the Director's notice of intent to deny (NOID) the petition, the Petitioner submitted a letter from a company offering her a U.S. job. The Director, however, questioned the letter's credibility and found no evidence of the Petitioner's acceptance of the purported offer.

Because the Petitioner does not challenge this denial ground on appeal, we deem the issue to be "waived" and decline to review the Director's finding regarding her intent to work in the United States. *See Rios v. Lynch*, 807 F.3d 1123, 1125 n.1 (9th Cir. 2015) (declining to address an argument not advanced on appeal); *see also Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)) (same). Based on the unchallenged denial ground regarding the Petitioner's intent to work in her field in the United States, we will affirm the petition's denial.

C. Misrepresentation

Noncitizens who fraudulently or willfully misrepresent material facts in benefit requests cannot gain admission to the United States. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).[2] Misrepresentations are willful if they are "deliberately made with knowledge of their falsity." *Matter of Mensah,* 28 I&N Dec. 288, 293-94 (BIA 2021) (citations omitted). A misrepresentation is material when it has a "natural tendency to influence, or [be] capable of influencing, the decision of the decision-making body to which it was addressed." *Id.* (citing *Kungys v. United States*, 485 U.S. 759, 771 (1988). Because of the potential, severe consequences to noncitizens, we must "closely scrutinize" findings of fraud or material misrepresentation. *Matter of Y-G-*, 20 I&N Dec. 794, 797 (BIA 1994).

The Director found that the Petitioner's evidence of her purported participation as a judge of others' work in the field under 8 C.F.R. § 204.5(h)(3)(iv) contained "willfully altered" documents. The Petitioner submitted evidence that she judged two financial competitions. She provided printouts about the contests and letters inviting her to serve as a judge at the competitions and thanking her for her service. With a prior extraordinary ability petition, however, the Petitioner submitted these same original documents. The documents' initial English translations indicated that she judged the work of undergraduate, university students. The Director found that the criterion at 8 C.F.R. § 204.5(h)(3)(iv)

[2] Our determination regarding the misrepresentation determination against the Petitioner is a "finding of fact," not an admissibility determination. These proceedings are not the appropriate forum for determining a noncitizen's admissibility. *Matter of Christo's*, 26 I&N Dec. at 540-41 (citing *Matter of O-*, 8 I&N Dec. 295, 296-97 (BIA 1959)). But USCIS decisions should include specific findings and conclusions on material issues of law or fact arising in a case, including findings of fraud or material misrepresentation. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also* 5 U.S.C. § 557(c). After we enter a finding of fact here, USCIS or another agency may determine the Beneficiary's admissibility in separate proceedings.

requires proof of judging professionals, not students. In the current petition proceedings, the Director found that the English translations of the same documents "were altered to remove any mention of 'students,' 'teachers,' 'college students,' and 'universities.'" Because both the prior and current translations share the same translator, the Director reasoned that the discrepancies did not result from a different translator's interpretation of the documents. Thus, the Director found that the Petitioner altered the documents' translations in this and another prior petition to remove indications that she had judged the work of students, rather than professionals.

On appeal, the Petitioner does not deny the alterations to the translations. Rather, she contends that the changes resulted from a misunderstanding between her and her "assistant." In her NOID response, the Petitioner submitted a letter from her assistant, who prepared the response, and a copy of a text message she purportedly sent to him before this petition's filing. The text message states:

> The [USCIS] letter [regarding the Petitioner's first petition] mentioned that my involvement as a judge in 2 student competitions does not meet the required criteria. They stated that being a judge for student competitions is not acceptable. Therefore, please remove those instances and only include my role as a judge in competitions involving professionals.

The Petitioner contends that she meant her text message to indicate her intent, in both a prior and the current petition, to abandon submitting evidence of her participation as a judge of others' work in the field. She stated: "What I mean is to delete the entire 'Judge Section' and not submit it as my evidence." In her assistant's letter, he stated:

> I mistakenly believed that I should delete the terms related to "students." I used the search function in [the word processing application] to remove these related terms. To my surprise, her actual intention was to completely remove the section about being a judge, as it did not meet the criteria and was not significant to her application. . . . Due to her high level of trust in me and the length of the document, she did not thoroughly review this part.

The record, however, does not support the Petitioner's explanation. The text message does not indicate her purported intent to abandon trying to meet the judging criterion. Rather, the message instructs her assistant to "include my role as a judge in competitions involving professionals." If the Petitioner intended to abandon the criterion, she has not explained why she instructed her assistant to submit alternate evidence. *See Love Korean Church v. Chertoff,* 549 F.3d 749, 754 (9th Cir. 2008); *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies). Also, as the Director found, none of the three extraordinary ability petitions that the Petitioner filed contain evidence that she judged professionals' work. *Id.* The Petitioner's explanation does not resolve the discrepancies in the English translations. Rather, the record supports the Director's finding that the Petitioner knowingly submitted the false translations.

The record also supports the materiality of the Petitioner's misrepresentation. We must examine misrepresentations under the circumstances existing when the false statements occurred. *Canas v. INS*, 243 F.3d 546 (Table) (9th Cir. 2000); *Matter of Bosuego*, 17 I&N Dec. 125, 128 (BIA 1979). At

the time of this petition's filing, the Petitioner did not yet know which evidentiary criteria USCIS would find that she meets or does not meet. Thus, her misrepresentation of the evidence regarding her participation as a judge of other's work "was predictably capable of affecting, i.e., had a natural tendency to affect, the official decision." *Kungys*, 485 U.S. at 771-72.

Also, when signing the Form I-140, Petition for Alien Workers, before the petition's filing, the Petitioner certified that she reviewed the petition and that all its information was "complete, true, and correct at the time of filing." The Petitioner's signature on the petition creates a "strong presumption" that she knew the filing's contents and assented to them. *See Matter of Castillo-Perez*, 27 I&N Dec. 664, 672 (BIA 2019). The statements of the Petitioner and her assistant that the Petitioner neglected to review the petition's relevant portion does not overcome the presumption that she knew the filing's contents. *Matter of Valdez*, 27 I&N Dec. at 500 ("Given the nature and significance of immigration documents, . . . it is reasonable to expect that [noncitizens] will take steps to ascertain the accuracy of documents they sign.")

On appeal, the Petitioner argues that the Director also erred in finding insufficient evidence of her purported performance in a leading or critical role for an organization with a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(viii). She notes that, in her first petition, the Director found evidence not only of the Petitioner's authorship of scholarly articles under 8 C.F.R. 204.5(h)(3)(vi) but also of her performance in a leading or critical role for an organization with a distinguished reputation.

The Director, however, did not issue a precedent or adopted decision on the Petitioner's first petition. The decision therefore did not require the Director to follow the same findings in this or other petitions. *See* 8 C.F.R. §§ 103.3(c), 103.10(b) (requiring USCIS to follow only *precedent* decisions in proceedings involving the same issues); *see also Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988) (allowing the immigration service to deny petitions indicating eligibility "merely because of prior approvals which may have been erroneous"). We therefore find the Petitioner's argument unpersuasive.

For the foregoing reasons, the record supports the Director's finding that, by submitting altered English translations of evidence, the Petitioner misrepresented material facts.

D. Remaining Evidentiary Criteria

As indicated above, the Petitioner states that she no longer seeks to meet the criterion regarding her participation as a judge of others in her field. *See* 8 C.F.R. § 204.5(h)(3)(iv). Also, we have rejected her argument that she performed in a leading or critical role for an organization with a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(viii). The Petitioner asks us to review whether she meets the following five other evidentiary criteria:

- Receipt of lesser nationally or internationally recognized awards;
- Membership in associations requiring outstanding achievements;
- Original contributions of major significance;
- Commandment of a high salary; and
- Commercial successes in the performing arts.

See 8 C.F.R. § 204.5(h)(3)(i), (ii), (v), (ix), (x).

On appeal, however, the Petitioner does not specify any errors in the Director's decisions regarding the five remaining evidentiary criteria. *See* 8 C.F.R. § 103.3(a)(1)(v) (requiring an appellant to "identify specifically any erroneous conclusion of law or statement of fact"). Thus, as with the question of her intent to continue work in her field in the United States, we deem the issues of the remaining five evidentiary criteria to be "waived" and decline to review the Director's findings on them. *See Rios*, 807 F.3d at 1125 n.1; *see also Matter of O-R-E-*, 28 I&N Dec. at 336 n.5.

Also, our decision regarding the Petitioner's intent to continuing working in her field in the United States resolves this appeal. Thus, even if she had specified errors and we could review the Director's decisions on the five remaining evidentiary criteria, we would have declined to reach those issues and would have instead reserved them. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant was otherwise ineligible).

Further, as the Petitioner has not demonstrated satisfaction of at least three evidentiary criteria, USCIS need not conduct a final merits determination. *Id.*

III. CONCLUSION

The record supports the Petitioner's misrepresentation of a material fact by submitting altered English translations of evidence. Also, she effectively waived challenge to the finding of insufficient evidence of her intent to continue working in her field in the United States.

ORDER: The appeal is dismissed.